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Nº. 01-419

Supreme Court, U.S.
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In The Supreme Court of The United States

CITY OF COLUMBUS, ET AL.,
Petitioners,

v.

OURS GARAGE AND WRECKER SERVICE, INC., ET AL.,
Respondents.

Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

JOINT BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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CONSENT OF THE PARTIES

The Ohio Municipal League, *amicus curiae,* has received the consent of both parties to file the within brief, pursuant to Rule 37.1 of the rules of this court.

The City of Toledo is permitted to file this brief, as a matter of right, pursuant to Rule 37.4 of the rules of this court.

David A. Ferris	Susan E. Ashbrook
Counsel for Respondents	Counsel for Petitioners
Per consent received October 31, 2001	Per consent received November 1, 2001

QUESTION PRESENTED

Does 49 U.S.C. § 14501(c) of the Interstate Commerce Act permit cities to enact safety regulations regarding local tow-truck operations, as the Second Circuit and the California Court of Appeals have held, or does it preempt such regulations, as the Fifth, Sixth, Ninth and Eleventh Circuits have held?

PARTIES TO THE PROCEEDINGS

Petitioners are (1) the City of Columbus, (2) the Director of Public Safety for the City, Mitchell Brown, and (3) the License Supervisor of the Public Safety Department for the City, Bobbie Beavers. Respondents are (1) Ours Garage and

Wrecker Service, Inc., and (2) the Towing and Recovery Association of Ohio.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-A) is reported at 257 F.3d 506 (6th Cir. 2001), and the district court's opinion (Pet. App. 33-A) is unreported.

JURISDICTION

The court of appeals entered judgment on June 19, 2001. Pet. App. 3-A. Jurisdiction in this Court exists under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

Article I, Section 8 United States Constitution:

"The Congress shall have Power ***

To regulate Commerce with foreign Nations, and among the several States, and withthe Indian Tribes; ***"

The Tenth Amendment provides:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

STATUTORY PROVISIONS

49 U.S.C. § 14501(c)(1) and (2) of the Interstate Commerce Act ("ICA") provide:

(1) General rule.—Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker,

or freight forwarder with respect to the transportation of property.

(2) Matters not covered.—Paragraph (1)—

(A) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization;

(B) does not apply to the transportation of household goods; and

(C) does not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation, or other provision relating to the price of for-hire motor vehicle transportation by a tow truck, if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.

STATEMENT OF THE CASE

The *amici* incorporate, by reference, the **Statement** of the Petitioner, the City of Columbus.

SUMMARY OF ARGUMENT

The Petitioner, the City of Columbus, has ably identified the reasons why this court should accept jurisdiction over this case: different Circuit Courts and state courts have interpreted 49 U.S.C. § 14501 in dramatically different ways. In the instant case, the Sixth Circuit Court of Appeals has construed the statute to prevent the City of Columbus from enacting and enforcing reasonable highway safety regulations against the respondent. Petitioner's arguments stand on their own merits.

The *amici curiae*, the City of Toledo, Ohio and the Ohio Municipal League, seek to add their voices in support of the position of the City of Columbus, and inject a **new legal theory** why the Sixth Circuit Court of Appeals, and certain other courts, have misinterpreted 49 U.S.C. § 14501.

By ruling as it has, the Sixth Circuit Court of Appeals has subjected 49 U.S.C. § 14501 to "constitutional doubt.". The lower court's opinion seems to suggest that Congress has the authority to control the **intra**state distribution of police powers. This interpretation would grant to Congress power which exceeds its Constitutional power to regulate **inter**state commerce, pursuant to Article I, Section 8 of the Constitution, which is contrary to, and in violation of, the Tenth Amendment to the United States Constitution. The *amici* respectfully suggest that the doctrine of "constitutional doubt" should be applied in this matter. The statute, which is susceptible to different interpretations, should **not** be interpreted in a way which implicates a violation of the fundamental principles of federalism. Thus, the interpretation of the statute, which is proposed by the City of Columbus, should be adopted by this court as the law of the land.

ARGUMENT

The Doctrine of Constitutional Doubt

This Court has recently described the doctrine and rationale of "constitutional doubt":

"As Justice Holmes said long ago: **'A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.'** *United States v. Jin Fuey Moy,* 241 U.S. 394, 401, 36 S.Ct. 658, 659, 60 L.Ed. 1061 (1916) (citing *United States ex rel. Attorney General v. Delaware & Hudson Co.,* 213 U.S. 366, 408, 29 S.Ct. 527, 535-536, 53 L.Ed. 836 (1909)); see also *Ashwander v. TVA,* 297 U.S. 288, 348, 56 S.Ct. 466, 483-484, 80 L.Ed. 688 (1936) (Brandeis, J., concurring). **'This canon is followed out of respect for Congress, which we assume legislates in the light of constitutional limitations.'** *Rust v. Sullivan,* 500 U.S. 173, 191, 111 S.Ct. 1759, 1771, 114 L.Ed.2d 233 (1991); see also *FTC v. American Tobacco Co.,* 264 U.S. 298, 305-307, 44 S.Ct. 336, 337-338, 68 L.Ed. 696 (1924)." (Emphasis added.) *Almendarez-Torez v. United States*, 523 U.S. 224 at 237-238, 118 S.Ct. 1219 at 1227-1228, 140 L.Ed.2d 350 (1998).

The doctrine does not require a finding that the statute is unconstitutional; rather, the inquiry is limited to a determination whether serious constitutional doubt exists as to a viable interpretation of the statute. *United States ex rel. Attorney General v. Delaware & Hudson Co.,* 213 U.S. 366, at 408, 29 S.Ct. 527, at 535, 53 L.Ed. 836 (1909).

It is with this framework in mind that the *amici* raise the following argument.

The Interpretation Riddled with Constitutional Doubt

Congress, according to the Sixth Circuit and other courts, has authorized the States to regulate highway safety, but prevented the political subdivisions of states from doing so. By ruling as they have, these courts have held that Congress has the authority to control the **intra**state distribution of police powers. This interpretation grants to Congress power which exceeds its Constitutional power to regulate **inter**state commerce, pursuant to Article I, Section 8 of the Constitution. It is respectfully submitted that such a statute would be contrary to the Tenth Amendment to the United States Constitution.

In *New York v. United States*, 505 U.S. 144, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992), this Court considered the federal government's authority to compel individual states to enforce federal regulations. In ruling that Congress lacked the authority to compel the States to enforce federal law, this Court stated:

"While Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States, **the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions.** See *Coyle v. Smith,* 221 U.S. 559, 565, 31 S.Ct. 688, 689, 55 L.Ed. 853 (1911). The Court has been explicit about this distinction. 'Both the States and the United States existed before the Constitution. The people, through that instrument, established a more perfect union by substituting a national government, acting, with ample power, *directly upon the citizens,* instead of the Confederate government, which acted with powers, greatly restricted, only upon the States.' *Lane County v. Oregon,* 7

Wall., at 76." (Emphasis added, and as in original).*Id.*, 505 U.S. 144 at 162, 112 S.Ct. 2408 at 2421, 120 L.Ed.2d 120.

New York, supra, goes on to say:

"We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts. *E.g., FERC v. Mississippi,* 456 U.S., at 762-766, 102 S.Ct., at 2138-2141; *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S., at 288-289, 101 S.Ct., at 2366; *Lane County v. Oregon,* 7 Wall., at 76. **The allocation of power contained in the Commerce Clause, for example, authorizes Congress to regulate interstate commerce directly; it does not authorize Congress to regulate state governments' regulation of interstate commerce.**" (Emphasis added.)*Id.*, 505 U.S. 144 at 166, 112 S.Ct. 2408 at 2423.

The position of the *amici* also finds support in language from *City of Chicago v. Atchison, Topeka & Santa Fe Railway Co.*, 357 U.S. 77, 78 S.Ct. 1063, 2 L.Ed.2d 1174 (1958). While holding that the City of Chicago could not interfere with the mandate of the railroads (as common carriers) to provide transportation between railroad stations in Chicago, the local government retained significant police power:

"We are fully aware that use of local streets is involved, but no one suggests that Congress cannot require the City to permit interstate commerce to pass over those streets. **Of course the City retains considerable authority to regulate how transfer vehicles shall be operated. It could hardly be denied, for example, that such vehicles must obey traffic signals, speed limits and other general safety regulations. Similarly the City may require registration**

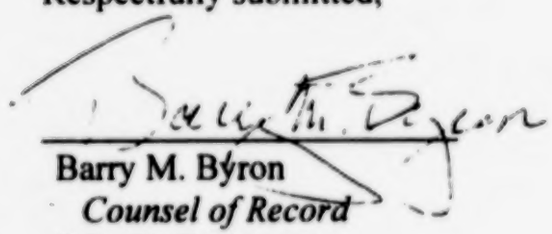
vehicles and exact reasonable fees for their use of the local streets. *Cf. Fry Roofing Co. v. Wood*, 344 U.S. 157, 73 S.Ct. 204, 97 L.Ed. 168; *Capitol Greyhound Lines v. Brice*, 339 U.S. 542, 70 S.Ct. 806, 94 L.Ed. 1053." (Emphasis added.) *Id.*, at 88, 78 S.Ct. at 1069-1070.

Implicit in the *Chicago* case is the notion that Congress' authority is limited to the regulation (or, more accurately in this case, the protection) of interstate commerce. To the extent Congress might attempt to limit the distribution of police powers within a state (after permitting the state government to pass such safety regulations), such action would run afoul of the Constitution.

CONCLUSION

The petition should be granted, and the judgment of the Sixth Circuit should be reversed. 49 U.S.C. § 14501 should be interpreted in such a manner as would avoid constitutional doubt.

Respectfully submitted,



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